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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
Plaintiff,

v.

Abdul Malik Abdul Kareem,  
Defendant.

No. CR-15-00707-01-PHX-SRB

**UNOPPOSED MOTION TO DISMISS  
COUNT 2 OF SECOND SUPSEDING  
INDICTMENT WITHOUT PREJUDICE**

For the following reasons, the United States respectfully moves to dismiss Count 2 of the Second Superseding Indictment without prejudice.

**BACKGROUND**

A Second Superseding Indictment (SSI) issued on December 22, 2015 (Doc. 158.) The SSI charged five counts: (1) conspiracy to transport firearms and ammunition in interstate commerce with intent to commit a felony, in violation of 18 U.S.C. § 371; (2) aiding and abetting the transportation of firearms and ammunition in interstate commerce with the intent to commit a felony, in violation of 18 U.S.C. § 924(b) and 18 U.S.C. § 2; (3) making false statements to the FBI, in violation of 18 U.S.C. § 1001(a)(2); (4) being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and (5) conspiracy to provide material support or resources to a designated foreign terrorist organization, in violation of 18 U.S.C. § 2339B.

1 Trial commenced on February 16, 2016, and after a 19-day trial the jury convicted  
2 Kareem on all counts. (Doc. 285). On February 8, 2017, the Court sentenced Kareem to a  
3 total of 360 months in prison. It reached this result by sentencing Kareem to 240 months  
4 of imprisonment on Count 5 to be served consecutively to a 120-month sentence of  
5 imprisonment on Count 2. The Court also sentenced Kareem to 60 months of imprisonment  
6 each on Counts 1 and 3 and 120 months of imprisonment on Count 4, all to be served  
7 concurrently with the 240-month sentence on Count 5.

8 Kareem timely filed a Notice of Appeal on February 21, 2017 (Doc. 492), and the  
9 government cross-appealed.

10 Kareem filed a Supplemental Motion for New Trial on June 11, 2018 (Doc. 505),  
11 and filed an Addendum to that Motion on April 26, 2019 (Doc. 541). The Court held an  
12 evidentiary hearing on October 15-17, 2019, and ultimately vacated Kareem's conviction  
13 on Count 2. The Court granted in part Defendant's supplemental motion for new trial with  
14 respect to Count 2 of the Second Superseding Indictment on April 30, 2020. The Court  
15 has ordered the government to provide notice of whether it intends to proceed to trial or  
16 dismiss Count 2 by June 15, 2020.

### 17 DISCUSSION

18 The United States moves to dismiss Count 2 of the SSI without prejudice. "[E]ven  
19 after a defendant has been convicted of a crime, a prosecutor may obtain a Rule 48(a)  
20 dismissal based on broad considerations of justice." *United States v. Gonzalez*, 58 F.3d  
21 459, 462 (9th Cir. 1995) (citing *United States v. Weber*, 721 F.2d 266, 268 (9th Cir. 1983)).  
22 A retrial on Count 2 would be lengthy and likely would involve the vast majority of the  
23 same evidence presented in the original trial in this case. Meanwhile, the combined  
24 statutory maximum sentence available on the remaining counts of conviction is greater  
25 than the original sentence imposed in the case.<sup>1</sup> In light of the procedural posture of this

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26  
27 <sup>1</sup> Counts 1 and 3 carry a statutory maximum penalty of five years each. PSR ¶ 88. Count  
28 4 carries a statutory maximum penalty of ten years. *Id.* Count 5 carries a statutory maximum  
penalty of 15 years. 18 U.S.C. § 2339(B)(1) (West Ed. 2014). The total statutory maximum prison  
sentence available is 35 years.

1 case, the likely lengthy trial that would ensue, and the sentence available on the remaining  
2 counts, the United States respectfully submits dismissal of Count 2 without prejudice will  
3 further the interests of justice in this case.

4 Therefore, pursuant to Federal Rule of Criminal Procedure 48(a), the United States  
5 respectfully moves to dismiss Count 2 of the Second Superseding Indictment.

6 Undersigned counsel conferred with counsel for Defendant, Daniel Drake, who  
7 stated that the defense has no objection to this motion.

8 RESPECTFULLY SUBMITTED this 15th day of June, 2020.

9  
10 MICHAEL BAILEY  
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District of Arizona

11 *s/ Kristen Brook*  
12 *s/ Joseph E. Koehler*  
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Daniel Drake & Daniel Maynard, *Attorneys for Defendant.*

*s/ Kristen Brook*  
U.S. Attorney's Office